

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ANTHONY ANDERSON,)	CASE NO. 4:21-cv-850
)	
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	MEMORANDUM OPINION AND
)	ORDER
OFFICER NIGHTINGALE,)	
)	
)	
DEFENDANT.)	

Before the Court is the interim Report and Recommendation (“R&R”) of Magistrate Judge Carmen E. Henderson recommending that the motion of *pro se* plaintiff, Anthony Anderson, to compel (Doc. No. 8) be denied, and the motion of defendant, Officer Nightingale, for an extension of time in which to answer the complaint (Doc. No. 9) be granted. (Doc. No. 11 (R&R).)

In her R&R, the magistrate judge construed plaintiff’s motion to compel as a motion for default judgment in that the motion challenged defendant’s failure to respond to the complaint and sought the relief requested therein. (Doc. No. 11 at 1.) The R&R recommended that the motion be denied without prejudice because plaintiff failed to seek an entry of default, in accordance with Fed. R. Civ. P. 55(a), prior to moving for default under Rule 55(b). (*Id.* at 2–3.) Additionally, the magistrate judge noted that, had plaintiff complied with Rule 55(a), plaintiff’s motion would have been denied because defendant demonstrated that he was not properly served with the complaint and plaintiff would not be prejudiced by permitting defendant to participate in

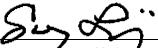
the case. (*Id.* at 3 n.1.) The magistrate judge also recommended that the Court grant defendant's motion for an extension of time in which to plead, recognizing that defendant had entered an appearance and attempted to defend the action. Because defendant had defended the action, and Rule 55(a) only sanctions an entry of default in situations where the defendant "has failed to plead or otherwise defend," the magistrate judge reasoned that any future motion for default would be without merit. (*Id.* at 3.)

Plaintiff did not file objections to the R&R. Instead, on April 6, 2022, plaintiff filed a motion for default judgment. (Doc. No. 12.) Once again, plaintiff failed to request an entry of default from the Clerk, as required under Rule 55(a).

The Court has reviewed the R&R, accepts the reasoning therein, and adopts the same. Accordingly, plaintiff's motion to compel (Doc. No. 8) is denied, and defendant's motion for an extension of time to answer (Doc. No. 9) is granted. For the same reasons, plaintiff's motion for default judgment (Doc. No. 12) is also denied. Defendant shall have leave until April 22, 2022 to file an answer or otherwise respond to the complaint.

IT IS SO ORDERED.

Dated: April 8, 2022


HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE